

MEMORANDUM

TO: Planning Commission

FROM: Jerry D. Sanders, Assistant County Attorney

DATE: July 19, 2006

MEETING DATE:

RE: REVISIONS TO MONROE COUNTY CODE, SECTION 9.5 – 45
(Notice)

I. BACKGROUND

Section 9.5 – 45 of the Monroe County Land Development Regulations is the general notice provision within the Land Development Regulations (LDRs). The proposed changes to Section 9.5 – 45 are mainly to clarify the language used in that section and to add some general notice provisions that had been scattered throughout other parts of the LDRs. The main substantive change is the change in the notice requirement for amendments to the text of the LDRs, which includes proposed changes to the land use district map from thirty (30) days to fifteen (15) days. This change is intended to eliminate the delay caused by the inability of the Board of County Commissioners to hear land use issues at consecutive meetings which are less than 30 days apart. The changes also reflect the significance of technology in the information dissemination process in that the section now also requires posting of notice on the Monroe County website.

II. SUMMARY

The proposed changes are as follows:

1. The language of Section 9.5 – 45 is clarified and made more orderly and easy to read and interpret.
2. General notice provisions that had been scattered throughout Section 9.5 are added to Section 9.5-45.
3. The notice requirement for amendments to the text of the LDRs, which includes proposed changes to the land use district map, is changed from thirty (30) to fifteen (15) days.
4. Section 9.5 – 45 now requires posting of notice on the Monroe County website.

III. FINDINGS OF FACT

1. The current language in Section 9.5 – 45 of the Land Development Regulations gives the general notice requirements for public hearings; and
2. A thirty (30) day notice requirement inhibited the ability of the BOCC to take action on land development matters at consecutive BOCC meetings; and
3. Other notice requirements were located in other sections of the Land Development Regulations, were disorderly, confusing and at times repetitive; and
4. Notice of all public hearings on land use matters should be posted on the Monroe County website as soon as it is practical to do so; and
5. It is the intent of the BOCC to ensure that the notice requirements within the Land Development Regulations are consistent with the requirements of the Florida Statutes.

IV. PROPOSED TEXT CHANGE

1. Please see the attached Ordinance.
2. The Growth Management Director and the DRC recommend the following changes:
 - A. Sec. 9.5-45(a) to be changed to require the legal description in a notice only when required by Florida Statute.
 - B. Sec. 9.5-45(c) to read as follow:
 - (c) *Posting of Notice:* At least ~~thirty (30)~~ **fifteen (15)** days prior to any public hearing, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing with a waterproof sign(s) provided by the Planning Department which are so located that the notice(s) shall be easily visible from all public streets and public ways abutting the property. Failure to provide proper notice as per the Monroe County Code or other reason resulting in a delayed hearing shall result in the re-noticing and rehearing of the original proposal and which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.

V. RECOMMENDED ACTION

Based on the findings of fact, it is proposed that the Planning Commission recommend **APPROVAL** of the proposed text change to Section 9.5 – 45 of the Monroe County Land Development Regulations.

ORDINANCE NO. – 2006

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 9.5-45; PROVIDING FOR A NOTICE REQUIREMENT OF FIFTEEN (15) DAYS FOR PUBLIC HEARINGS, AMENDMENTS TO THE TEXT OF THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS AND PROPOSED CHANGES TO THE LAND USE DISTRICT MAP, FIXING THE TYPE AND SIZE OF NOTICE ADVERTISEMENTS; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING AN EFFECTIVE DATE AND; PROVIDING FOR FILING IN THE OFFICE OF THE SECRETARY OF STATE OF THE STATE OF FLORIDA AND TRANSMITTAL TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, the Monroe County Board of County Commissioners (BOCC), after public hearing(s), has reviewed and considered the proposed amendments to the Land Development Regulations (LDRs), comments of the public, recommendations of the Planning Commission, recommendations of staff, and other matters; and

WHEREAS, the BOCC hereby makes the following Findings of Fact:

1. The current language in Section 9.5 – 45 of the Land Development Regulations gives the general notice requirements for public hearings; and
2. A thirty (30) day notice requirement inhibited the ability of the BOCC to take action on land development matters at consecutive BOCC meetings; and
3. Other notice requirements were located in other sections of the Land Development Regulations, were disorderly, confusing and at times repetitive; and
4. Notice of all public hearings on land use matters should be posted on the Monroe County website as soon as it is practical to do so; and
5. It is the intent of the BOCC to ensure that the notice requirements within the Land Development Regulations are consistent with the requirements of the Florida Statutes.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Section 9.5, Monroe County Code, is hereby amended to read as follows:

Sec. 9.5-45. Notice.

- (a) *Content of Notice:* Every required notice shall include the date, time and place of the hearing, the address where known, a description of the site of the proposed

development to identify it for others to locate, the legal description of the subject property with reference to the closest mile marker, a summary of the proposal to be considered, and identification of the body conducting the hearing. **Advertisements for amendments to the land use district map shall be captioned, "NOTICE OF CHANGE OF LAND USE REGULATIONS" and shall contain a geographic location map which clearly indicates the area covered by the proposal, shall include major street names as a means of identification of the area and shall state in a brief form the nature of the amendment to be considered.**

(b) *Publication:* Notice of public hearings shall be given at least ~~thirty (30)~~ **fifteen (15)** days in advance of the hearing date by publication in the nonlegal section of the local newspapers of greatest general **paid** circulation in the Lower, Middle, and Upper Keys of Monroe County. **The newspapers shall be of general interest and readership in the community and whenever possible, the advertisement shall appear in a newspaper that is published five (5) days a week unless the only newspaper in the community is published less than five (5) days a week.** ~~except, however, that the notice for amendments to the text of these regulations shall be given at least fifteen (15) days-excluding Sundays and holidays in advance of the hearing by publication in either the legal or nonlegal section of the local newspapers of greatest general circulation in the Lower, Middle, and Upper Keys of Monroe County.~~ **The advertisements shall be no less than one-quarter page in a standard size or tabloid size newspaper and the headline in the advertisements shall be in a type no smaller than eighteen (18) point.**

(c) *Posting of Notice:* At least ~~thirty (30)~~ **fifteen (15)** days prior to any public hearing, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing with a waterproof sign at least four (4) square feet in front surface area, which is so lettered that the date, time and location of the hearing shall be easily visible from all public streets and public ways abutting the property. Failure to provide proper notice as per the Monroe County Code or other reason resulting in a delayed hearing shall result in the renoticing and rehearing of the original proposal and which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.

(d) *Mailing of Notice:* Notice of a public hearing to consider a major conditional use shall be mailed by the county to all owners of real property located within three hundred (300) feet of the property proposed to be developed as a major conditional use, including any residents of the parcel proposed for development, at least ~~thirty (30)~~ **fifteen (15)** days prior to a public hearing. A list of such owners, as shown by the latest available records in the Monroe County Property Appraiser's office, shall be provided by the applicant with an application for development approval.

(e) *Other Notice:* Notice of all public hearings shall be ~~mailed to all organizations, associations and other interested persons or groups which have registered with the department of planning and paid an annual fee to defray the cost of mailing, posted on the Monroe County Website as soon as is practical.~~ **Failure to post notice on the Monroe County Website shall not constitute grounds for the cancellation of any public hearing nor shall it constitute grounds for the cancellation of any action taken by a board at such a meeting.**

(f) *Affidavit and Photograph of Notice:* An affidavit and photographic evidence shall be provided by the applicant at the public hearing that the applicant has complied with the notice required by this section.

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Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, cause or sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any federal or state law, rule, code or regulation, the more restrictive shall apply. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict. However, the suspension of conflicting laws or rules as provided for under F.S. 252.46(2) is intended to and shall apply.

Section 4. Filing.

This ordinance shall be filed with the Office of the Secretary of State of the State of Florida and shall not become effective prior to or without a notice issued by the Florida Department of Community Affairs or Florida Administration Commission approving the ordinance.

Section 5. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Effective Date.

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the __ day of _____, 2006.

Mayor Charles "Sonny" McCoy _____

Mayor Pro Tem Dixie Spehar _____
Commissioner George Neugent _____
Commissioner David Rice _____
Commissioner Glenn Patton _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

Approved as to form:

County Attorney